

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Closed Captioning of Video Programming)	CG Docket No. 05-231
)	
Telecommunications for the Deaf, Inc. et al.)	
Petition for Rulemaking)	

REPLY COMMENTS OF HOME BOX OFFICE, INC.

Home Box Office, Inc. (“HBO”), through its attorneys, hereby submits these reply comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.^{1/} The *NPRM* was issued in response to a Petition for Rulemaking (“Petition”) filed by Telecommunications for the Deaf, Inc. et al. (“Petitioners”).^{2/}

In its initial comments, HBO expressed confidence that the record developed in this proceeding would demonstrate that, under the current closed captioning rules, programming services and distributors have made great progress in providing closed captioned programming, that their quantitative and qualitative accomplishments have been significant, and that further regulations are unnecessary. The record has, in fact, demonstrated this progress. No commenter provided evidence of widespread problems, chronic non-compliance with the Commission’s closed captioning rules, or other material deficiencies that would justify, or be improved by, a

^{1/} Closed Captioning of Video Programming, *Notice of Proposed Rulemaking*, 20 FCC Rcd 13211 (2005) (“*NPRM*”).

^{2/} See *id.* at 13212 ¶ 1 (granting petition for rulemaking and initiating a proceeding to examine the Commission’s closed captioning rules). See also Telecommunications for the Deaf, Inc. et al, Petition for Rulemaking, Closed Captioning of Video Programming, RM No. 11065 (filed July 23, 2004) (“Petition”).

layer of additional regulations. Moreover, those comments supporting FCC regulation of captioning quality, in fact, demonstrate why such regulation would be unworkable.

I. THE RECORD DOES NOT SUPPORT ADDITIONAL CLOSED CAPTIONING REGULATIONS

The record compiled through the initial round of comments in this proceeding confirms HBO's view that there are no widespread problems with the quality or quantity of closed captioning. Although some parties allege deficiencies in general terms, they provide no evidence that would justify reversal of prior Commission determinations that oversight of captioning quality, monitoring and reporting requirements, and other regulatory measures are unnecessary. In fact, such measures would be counter-productive.

Some of the proponents of regulatory change effectively concede that the relief they seek is not necessary. For example, the WGBH National Center for Accessible Media ("NCAM") advocates the equivalent of a "letter perfect" regulatory standard for all captioning, but concedes that the undocumented captioning problems it perceives are only "generated by a few bad actors."^{3/} Similarly, Media Captioning Services ("MCS"), which also supports a quality standard based on an accuracy percentage, acknowledges that at the 2002 Caption Quality Initiative conference involving deaf and hard of hearing consumers, advocates and captioning companies, the participants did not rank the quality of captioning as a major concern.^{4/}

Equally significant is the fact that none of the commenters provided evidence to show that programmers and distributors are failing in their captioning responsibilities in any material respect. For example, there is no statistical analysis demonstrating lack of compliance with the existing rules by any quantifiable percentage of programming services and distributors. Nor is any evidence presented establishing widespread non-responsiveness to captioning consumers

^{3/} NCAM Comments at 5.

^{4/} See MCS Comments at 5-6.

who may be experiencing difficulties receiving or understanding captioning. Simply put, the record in this proceeding does not support a finding that there is either a quality or a quantity problem with captioning today. Indeed, these findings track HBO's experience.^{5/}

In light of: (1) the admissions by some supporters of additional captioning regulations that problems are not widespread, (2) a lack of concrete evidence in the record to the contrary, and (3) ample evidence of the efforts being made to achieve a high level of captioning quality even as the Commission's quantitative benchmarks approach 100%,^{6/} there is simply no basis for adopting the quality, monitoring, reporting and other proposals discussed in the *NPRM*. Instead, the proper approach for addressing any errors is to identify and deal with any "bad actors" under the existing rules, not to add an additional layer of complex regulations and associated obligations on those captioning providers who are meeting or exceeding their obligations.

II. THE PROPONENTS OF CAPTIONING QUALITY STANDARDS PROVE THAT SUCH STANDARDS ARE UNWORKABLE

When the Commission first considered non-technical quality standards for captioning in 1997, it declined to adopt them on the basis that "it would be difficult to establish standards in this area."^{7/} The Commission went on to note its concern "about the administrative burden that would be imposed on video programming providers and the Commission if millions of hours of television programming must be monitored to make sure that no more than a specified percentage of words are wrong, misspelled or missing."^{8/}

^{5/} As HBO noted in its comments, **the closed captioning errors in HBO feeds are fewer than the miniscule number of audio discrepancies.** HBO Comments at 5.

^{6/} In addition to HBO, a number of commenters described the captioning quality control process prevalent among programming services and programming distributors. *See generally, e.g.,* Joint Comcast Networks Comments, Motion Picture Association of America Comments, National Cable and Telecommunications Association Comments.

^{7/} Closed Captioning and Video Description of Video Programming, *Report and Order*, 13 FCC Rcd 3272, 3374 ¶ 224 (1997).

^{8/} *Id.* at 3374-75.

The comments filed by supporters of quality standards reinforce that the Commission was correct in its earlier reticence to adopt such standards. First, these comments reflect significant disagreement regarding how a quality standard should be measured. Moreover, the various quality measurement proposals serve to highlight: (1) the impossibility of assuring compliance with, and the draconian results of, an objective standard, and (2) the vagueness of and challenges in enforcing a more subjective benchmark.

Some quality standards advocates acknowledge the difficulty of crafting rules to accomplish their objective. MCS, for example, admits that there “are significant administrative/analytical challenges in computing accuracy on a statistically significant basis.”^{9/} Likewise, the National Court Reporters Association (“NCRA”) states:

NCRA would certainly welcome and support such a [quality] standard if one could be developed that is fair and reasonable and takes into account the inherent challenges of providing quality live captioning. However, it would be extremely difficult to develop an accuracy standard that could be agreed to by the captioning industry as a whole.^{10/}

The specific proposals advanced by other commenters reflect the unworkability of quality standards in general. Those favoring a “letter perfect” approach, such as NCAM, believe the

^{9/} MCS Comments at 9.

^{10/} NCRA Comments at 4. NCRA provides some concrete examples of the difficulty that would be encountered:

[i]f the word “drizzle” is spoken during the broadcast, and the captioner knows that that word is not in their job dictionary and expects that writing that word could lead to an error on the screen, the captioner will substitute a different word or words that he or she knows is in their dictionary, such as “light rain,” to ensure that viewers have a full understanding of what was said. Is such a change an error or really an example of a qualified captioner knowing how to adjust as needed to ensure the audience’s full comprehension?

* * *

Trying to define an error could be problematic. If steno strokes appear in the place of a word, then clearly it is an error. But if certain words are replaced with other words, or some nonessential words are dropped, all to ensure the comprehension of the viewer, should that also be defined as an error?

Id. at 4-5.

Commission's rules should specify an extensive list of items that would constitute captioning quality.^{11/} In order to demonstrate compliance, it would be necessary for someone to count all of the words spoken in a program, tally the captioning errors, and demonstrate the appropriate accuracy level for the type of programming.^{12/} The approach would require monitoring of thousands of hours of programming each day by programming services and distributors. Even minor errors that have no significant effect on the comprehension of the captioned material would be considered violations under this approach. Moreover, it would lead to endless disputes over whether a captioner's decision to replace a word, or edit captions for a children's program, or employ a different "style" of captioning was appropriate.

In contrast, Global Translation, Inc. ("GTI") asserts that quality standards "based on the percentage of correct words are misleading as indicators of the intelligibility and usefulness of the overall captions."^{13/} GTI instead advocates a standard "that takes into account the severity of errors and their impact on the understandability of each sentence, and the program segment overall."^{14/} Pursuant to this "understandability" approach, a programming service or distributor could never have assurance that its captioning efforts met the requirements of the rules. Instead, captions could constantly be questioned based on different assessments of "understandability" --

^{11/} NCAM, for example, proposes for non-live captioning: (1) 100% accurate transcription (but edited versions, with more limited vocabularies, for certain children's programming), (2) 100% accurate spelling, (3) grammar must mirror audio, (4) punctuation pursuant to specified style manuals, (5) identification of speakers, (6) identification of non-verbal sounds, and (7) "correct" caption styles based on the type of program (*e.g.*, pop-on captions for movies, roll-up captions for talk shows). NCAM Comments at 8-11. NCAM suggests that many of the same elements should be applied to live captioning, with accuracy levels decreased by a small amount -- to 99%. *Id.* at 8-9.

^{12/} Other commenters propose similar standards, but differ as to the percentage of errors to be allowed. MCS, for example, would tolerate a 95% accuracy rate for live captioning and a 99.5% rate for pre-recorded captions. Caption Perfect believes error rates of more than 0.5% and 0.1% for live captioning and pre-recorded captioning, respectively, are unacceptable.

^{13/} GTI Comments at 5.

^{14/} *Id.*

a subjective notion that would depend in large measure on the educational background and sophistication of the captioning consumer.

Both the “letter perfect” and the “understandability” proposals are infeasible and would add enormous costs to the captioning process without any commensurate benefit to consumers. Indeed, adoption of any of the proposals before the Commission simply would divert vast resources away from improving captioning. Instead of entering this regulatory thicket, the Commission should abide by its earlier determinations and refrain from attempting to define “quality.” Rather, the Commission should continue to let the captioning marketplace evolve and use its existing rules and authority to deal with any “bad actors” that may be identified. Imposing additional regulatory obligations on the great majority of programming services and distributors who work diligently to provide closed captioning at high quantitative and qualitative levels is neither necessary nor appropriate.

CONCLUSION

In establishing its captioning rules, the Commission understood that making video programming fully accessible to deaf and hard of hearing individuals through reliable, high quality closed captioning would require video programmers and distributors, equipment manufacturers, and consumers to work together. HBO supports this goal and it, along with the television programming industry as a whole, has made great progress to comply with the Commission’s existing closed captioning rules. The proposals put forth in the *NPRM*, however, should be rejected because they would stifle closed captioning flexibility and innovation, create enormous burdens for the Commission and closed captioning providers, and do little to further the stated objective of improving the amount and quality of closed captioning.

Respectfully submitted,

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